

### ***Remarks***

Reconsideration of this Application is respectfully requested.

Applicants respectfully requests entry and consideration of the amendment and remarks previously filed March 2, 2009. The current submission is further responsive to the Final Office Action mailed December 30, 2009 in view of the Advisory Actions mailed April 1, 2009 and April 6, 2009.

Upon entry of the foregoing amendment, claims 1-20 are pending in the application, with claims 1 and 13 being independent claims. Claims 21-26 remain withdrawn. Claim 1 and 13 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

### ***Rejections under 35 U.S.C. § 102***

Paragraph 2 of the Office Action rejects claims 1, 8-10, 13, and 15-16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,437,227 to Theimer, *et al.*, (“Theimer”). The advisory action maintains, the For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw the rejection.

Claim 1 recites, in part, “an input device to receive a subscriber request to store music, while the subscriber is listening to the music ***without prior providing a list of potential song titles to the subscriber....***” Applicants respectfully submit Theimer neither teaches nor suggests such an input device.

Instead, as Theimer discloses, once the piece or pieces of music have been recognized, their titles are sent to the user so that the user can select the music to be acquired. For example, at col. 8, ll. 8-11, Theimer discloses:

In order subsequently to present the pieces of music to the user in the order ascertained, they are transmitted from the database station 12 to the mobile telephone 10, where the titles are displayed on the display device 24....

And, at col. 8, ll. 28-33, Theimer discloses:

Once the piece of music, or a series of possible pieces of music, have been recognized, the title or titles is or are transmitted to the user, possibly together with characteristic passages of the pieces of music, so that the user can select the desired piece of music therefrom.

In significant contrast to the system disclose in Theimer, embodiments of the present invention, as recited in claim 1, avoid Theimer's requirement for displaying titles to the user for selection of the desired music.

Consequently, Applicants respectfully assert that Theimer does not disclose each and every element recited in claim 1. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claim 1 set forth in paragraph 2 of the Office Action.

Claims 13 recites, in part, "receiving an indication from a subscriber to store music that the subscriber is listening to ***without prior providing a list of potential song titles to the subscriber.***" For reasons analogous to those provide above with respect to claim 1, Applicants respectfully submit Theimer does not disclose this element of claim 13. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claim 13 set forth in paragraph 2 of the Office Action.

Claim 8 depends from claim 1. In view of at least this dependency, Applicants respectfully assert that claim 8 is not anticipated by Theimer. Claims 15-16 depend from claim 13. In view of at least this dependency, Applicants respectfully assert that claims 15-16 are not anticipated by Theimer. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 8 and 15-16 set forth in paragraph 2 of the Office Action.

***Rejections under 35 U.S.C. § 103***

Paragraph 9 of the Office Action rejects claims 2-3, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Theimer in view of Official Notice. For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw this rejection.

While acknowledging that Theimer does not teach the particular features recited in claims 2-3, and 14, the Examiner takes official notice that such features would be obvious to those having ordinary skill in the art. Claims 2-3 depend ultimately from claim 1. Claim 14 depends from claim 13.

Without addressing the propriety of the rejection, Applicants respectfully assert the office notice relied upon by the Examiner, does not overcome the deficiency of Theimer explained above with respect to claims 1 and 13. Thus, Applicants respectfully submit that the combination of Theimer in view of the office notice neither teaches nor suggests the combination of features recited in claims 2-3 and 14. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 2, 3, and 14 set forth in paragraph 9 of the Office Action.

Paragraph 13 of the Office Action rejects claims 4-6 under 35 U.S.C § 103(a) as being unpatentable over Theimer in view of U.S. Patent No. 7,356,557 to Kikuchi *et al.* (“Kikuchi”). For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw the rejection.

Claims 4-6 depend directly or indirectly from claim 1. As explained above, Theimer does not disclose each element of claim 1. Applicants respectfully assert that Kikuchi does not cure the deficiency of Theimer. Consequently, Applicants respectfully assert that the combination of Theimer with Kikuchi neither teaches nor suggests the combination of features recited in claims 4-6. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 4-6 set forth in paragraph 13 of the Office Action.

Paragraph 17 of the Office Action rejects claims 7 and 17 under 35 U.S.C § 103(a) as being unpatentable over Theimer in view of U.S. Publication No. 2007/0177586 to Eyal *et al.* (“Eyal”). For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw the rejection.

Claim 7 depends from claim 1. Claim 17 depends from claim 13. As explained above, Theimer does not disclose each element of claim 1 or claim 13. Applicants respectfully assert that Eyal does not cure the deficiency of Theimer. Consequently, Applicants respectfully assert that the combination of Theimer with Eyal neither teaches nor suggests the combination of features recited in claims 7 and 17. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 7 and 17 set forth in paragraph 17 of the Office Action.

Paragraph 20 of the Office Action rejects claims 9-11 under 35 U.S.C § 103(a) as being unpatentable over Theimer in view of 7,093,754 to Sako ("Sako"). For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw the rejection.

Claims 9-11 depend directly or indirectly from claim 1. As explained above, Theimer does not disclose each element of claim 1. Applicants respectfully assert that Sako does not cure the deficiency of Theimer. Consequently, Applicants respectfully assert that the combination of Theimer with Sako neither teaches nor suggests the combination of features recited in claims 9-11. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 9-11 set forth in paragraph 20 of the Office Action.

Paragraph 24 of the Office Action rejects claims 12 under 35 U.S.C § 103(a) as being unpatentable over Theimer in view of 7,113,927 to Tanaka *et al.* ("Tanaka"). For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw the rejection.

Claims 12 depends indirectly from claim 1. As explained above, Theimer does not disclose each element of claim 1. Applicants respectfully assert that Tanaka does not cure the deficiency of Theimer. Consequently, Applicants respectfully assert that the combination of Theimer with Tanaka neither teaches nor suggests the combination of features recited in claim 12. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claim 12 set forth in paragraph 24 of the Office Action.

Paragraph 26 of the Office Action rejects claims 18-20 under 35 U.S.C § 103(a) as being unpatentable over Theimer in view of U.S. Publication No. 2005/0031314 to Galdos ("Galdos"). For at least the following reasons, Applicants respectfully request the Examiner reconsider and withdraw the rejection.

Claims 18-20 depend directly or indirectly from claim 13. As explained above, Theimer does not disclose each element of claim 13. Applicants respectfully assert that Galdos does not cure the deficiency of Theimer. Consequently, Applicants respectfully assert that the combination of Theimer with Galdos neither teaches nor suggests the combination of features recited in claims 18-20. Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 18-20 set forth in paragraph 26 of the Office Action.

### ***Conclusion***

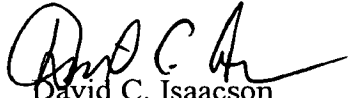
All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Amdt. dated June 29, 2009 - 11 -  
Reply to Office Action of December 30, 2008

Fitzgerald, *et al.*  
Appl. No. 10/713,143

Prompt and favorable consideration of this Amendment and Reply is respectfully  
requested.

Respectfully submitted,

  
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